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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,201	06/02/2000	W Keith Fisher	SOLU:103	6110

7590

03/28/2002

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 03/28/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-7

Office Action Summary

Application No.

09/586,201

Applicant(s)

FISHER ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-100 is/are pending in the application.
- 4a) Of the above claim(s) 30-100 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-6. 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-29, drawn to a yarn of staple fibers, classified in class 428, subclass 364+.
 - II. Claims 30-58, drawn to a fabric of a staple fiber yarn, classified in class 442, subclass various.
 - III. Claims 59-87, drawn to a carpet having piles of a staple fiber yarn, classified in class 428, subclass 97.
 - IV. Claims 88-100, drawn to a blend of staple fibers, classified in class 428, subclass 359.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group IV and Groups I, II, and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product (i.e., staple fiber blend) is deemed to be useful as a fibrous batt of staple fibers and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this

Art Unit: 1771

is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Inventions of Group I and Groups II and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product (i.e., yarn) is deemed to be useful as a reinforcement strand or a string-like article and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Inventions of Group II and Group III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions the final textile product of Group III employs the inventive yarn as a pile yarn, while the final textile product of Group II does not.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Art Unit: 1771

6. During a telephone conversation with Craig Lundell on March 22, 2002 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-29.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 30-100 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Said claims depend from claims 11 and 12, respectively, and further limit the 'first and second longitudinally-extending constituents.' However, said constituents are not recited until claim 13. Thus, there is a lack of antecedent basis for said constituents.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,756,941 issued to McCullough et al.

McCullough discloses a conductive yarn comprised of partially carbonized polyacrylonitrile, staple fibers alone or in a blend with non-conductive fibers (abstract and col. 2, line 44-col. 3, line 3). The yarn is suited for use in a carpet backing fabric as a warp or fill yarn. Alternatively, a web of said carbonized staple fibers and non-conductive staple fibers may be needlepunched onto a carpet primary backing (col. 3, lines 43-48). Thus, McCullough anticipates Applicant's claims 1-5 and 8.

12. Claims 1, 2, 4, 5, 8, 12-14, and 22-28 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,026,603 issued to Rodini.

Rodini discloses yarns made from a blend of non-conductive polymer staple fibers and conductive bicomponent staple fibers (col. 1, lines 35-50). The bicomponent fibers comprise a core of carbon black and a sheath of a non-conductive polymer. Thus, Rodini anticipates Applicant's claims 1, 2, 4, 5, 8, 12-14, and 22-28.

13. Claims 1, 2, 4-7, 12, 13, and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,690,057 issued to Norris.

Art Unit: 1771

Norris discloses an antistatic yarn useful in marking carpet pile. Said yarn comprises a blend of metal coated polymeric film which is fibrillated into staple fibers and wool or nylon staple fibers (abstract and col. 1, lines 43-66). The metallized fibers comprise between 1% and 50% of the inventive yarn (col. 3, line 63-col. 4, line 1). Thus, Norris anticipates claims 1, 2, 4-7, 12, 13, and 22-24.

14. Claims 1-5, 9, 12-14, and 19-29 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,420,534 issued to Matsui et al.

Matsui discloses bicomponent filaments containing a conductive component comprising a conductive metal oxide dispersed in a thermoplastic polymer (abstract). Suitable metal oxides include antimony doped tin oxide (col. 2, lines 47-49). The bicomponent filaments have conductive core and non-conductive sheath (Figure 2) or any of the other configurations shown in Figures 3-17 (col. 6, line 62-col. 7, line 6). Said bicomponent filaments may be blended with other fibers or used alone (100%) and can be cut into staple fibers, made into yarns, and then into fabrics (col. 10, lines 19-34 and col. 14, lines 46-59). Thus, claims 1-5, 9, 12-14, and 19-29 are anticipated by the cited Matsui patent.

15. Claims 1-5, 10-18, and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,780,572 issued to Graham.

Graham discloses a conductive polyaniline composition which may be made into fibers or may be used to coat individual fibers or fabrics (col. 2, line ⁶⁴~~7~~-col. 3, line 11). In particular, the polyaniline composition may be coated onto a carpet backing fabric (col. 7, lines 38-44). Thus, claims 1-5, 10-18, and 22-25 are anticipated by Graham.

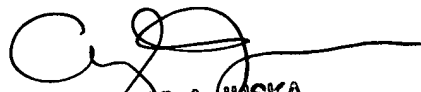
Art Unit: 1771

Conclusion

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
March 25, 2002